

Topical index for 1990

Since 1945, NCFAs has been publishing a magazine containing matters of interest to the asset-based financial services industry, as well as to accountants, attorneys and students.

The following topical index covers articles published from January 1990 to December 1990.

Legal notes

Bankruptcy law

- Debtor-in-possession financing agreement rejected because it required a release of all claims against the lender, priority over prior liens and cross-collateralization May/June 90
- Payments to a lender on behalf of insolvent wholly-owned subsidiary recoverable as fraudulent transfers Sept/Oct 90
- Termination of financing in accordance with loan agreements does not give rise to equitable subordination claim Nov/Dec 90

Financial/General

- Equitable subordination of secured lender's claim reversed May/June 90
- No equitable subordination of a lender's claim absent operating control of gross misconduct by lender May/June 90
- Corporation not liable for Superfund cleanup costs incurred by its subsidiary May/June 90
- One-year preference period for non-insiders adopted in Sixth Circuit July/Aug 90
- Leveraged buyouts may be attacked as fraudulent transfers by post-LBO creditors July/Aug 90
- Secured lender that participated in financial management of borrower's facility liable for environmental cleanup Sept/Oct 90
- Recovery of a fraudulent conveyance does not give rise to any right of contribution Sept/Oct 90
- Secured lender that did not participate in management of borrower's facility was not liable for environmental cleanup Nov/Dec 90
- Equipment lease deemed to be an extension of credit involving an interest factor in violation of state usury statutes Nov/Dec 90

Uniform Commercial Code

- Financing statement amendment is adequate to maintain perfection following debtor's name change. July/Aug 90
- Supplier could not claim purchase money security interest in accounts arising from sale of inventory July/Aug 90 & Sept/Oct 90

- Filing in United States Copyright Office is required to perfect security interest in registered copyright Nov/Dec 90

Articles

- NCFAs convention keynote address
 - by Richard L. Solar Jan/Feb 90
- Why the Glass-Steagall Act is dying
 - by Dr. Paul S. Nadler Jan/Feb 90
- Putting the merchant back into banking
 - by Michael T. Schlegel Jan/Feb 90
- Inventory valuation and loan covenants: LIFO vs. FIFO
 - by Russell L. Babines Jan/Feb 90
- Protecting the portfolio — field examinations
 - by Mary Catherine Draper Jan/Feb 90
- NCFAs 45th annual convention
 - by Michelle J. Denmark Jan/Feb 90
- A timely tale of luxury watches: the Swiss prove Japan can be beaten
 - by Louis Rukeyser Jan/Feb 90
- Legislative and judicial developments in 1989: part 1
 - by A. Bruce Schimberg, James E. Clark, Douglas H. Williams Jan/Feb 90
- Accountants' corner: Uniform Capitalization Rules Jan/Feb 90
- Interview with NCFAs president
 - Frank J. Donahue Mar/April 90
- Finding and hiring machinery and equipment appraisers
 - by Alan A. Iannacito, ASA Mar/April 90
- Transformation of asset-based lending in the eighties
 - by Janis M. Czuszek Mar/April 90
- Audit and control of collateral: for a credit line to a small equipment-leasing company
 - by Edmund Sawin Mar/April 90
- Asset-based lending when the assets are intangible
 - by Christopher D. Cortese Mar/April 90
- Developing a framework to train ABL auditors
 - by Scott H. Mitchell Mar/April 90
- When to call in a consultant
 - by Martin I. Katz Mar/April 90
- What the Federal Reserve tells us
 - by Dr. Paul S. Nadler Mar/April 90
- New hazards for secured lenders
 - by Bruce Hartman Mar/April 90
- Legislative and judicial developments in 1989: part 2
 - by A. Bruce Schimberg, James E. Clark, Douglas H. Williams Mar/April 90
- The Arabian Nights had nothing on the wishful thinkers of the '90s
 - by Louis Rukeyser Mar/April 90

- Accountants' corner: Technical and Miscellaneous Revenue Act of 1988 Mar/April 90
- Bankruptcy wars!
by Michael L. Molinaro May/June 90
- Arbitration clauses in commercial loan agreements
by Richard B. Polivy May/June 90
- Environmental risk in commercial lease agreements
by Paul S. Street and D. Bernard Zaleha May/June 90
- The history of commercial finance: another in a series
by Sidney Rutberg May/June 90
- Lobbying: influencing public policy
by Linda Eisnagle May/June 90
- Stopping sales out of trust
by Howard A. Salk May/June 90
- Some observations about *Deprizio*
by A. Bruce Schimberg May/June 90
- Bracing for the downturn
by James V. McTevia May/June 90
- Current asset management — inventory
by Venkata Ramani May/June 90
- Insurance potpourri
by Jack Kleiner, C.L.U. May/June 90
- An open letter to the emerging peoples of eastern Europe
by Louis Rukeyser May/June 90
- Accountants' corner:
ESOPs May/June 90
- Your opportunity from an ill wind
by Dr. Paul S. Nadler July/Aug 90
- The language of big business
by Michelle J. Denmark July/Aug 90
- DIP financing helps troubled LBOs
by Jim Callas July/Aug 90
- Are we out of margin on the collateral?
by Venkata Ramani July/Aug 90
- NCFA's Washington legislative conference:
a day in the nation's capital
by Bruce H. Jones July/Aug 90
- The advent of computer-related crimes
by Robin Rockwell July/Aug 90
- One small step for free enterprise
by Greg Willard July/Aug 90
- As recession fears fade, U.S. heads for an all-time record high in 1991
by Louis Rukeyser July/Aug 90
- Accountants' corner: Reviewing the statement of cash flows July/Aug 90
- Where did the money go?
by Dr. Paul S. Nadler Sept/Oct 90
- Asset-based lending: the cashflow gambit
by Ronald L. Stacey Sept/Oct 90
- Famous frauds: another in the series on the history of factoring and finance
by Sidney Rutberg Sept/Oct 90
- Avoiding lender liability in real estate workouts
by Daniel S. Berman Sept/Oct 90
- Chicago — 1990
by Michelle J. Denmark Sept/Oct 90
- Prescription for survival: the annual self-examination
by James V. McTevia Sept/Oct 90
- Field examination efficiency using Lotus 1-2-3®
by Alexander R. Striler Sept/Oct 90
- Helping your client by knowing when to say no
by Jeffrey A. Kessler Sept/Oct 90
- Getting to the core of the problem
by Tim Alexander Sept/Oct 90
- Economist says we should stop worrying and learn to love corporate debt
by Louis Rukeyser Sept/Oct 90
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- Environmental liability: lenders beware
by Hamid Nahai and Nicholas F. Klein .. Nov/Dec 90
- Troubled debt restructuring
by Robert S. Paul and Stephen P. Johns .. Nov/Dec 90
- Dangers in the use of securities as collateral
by Michael L. Weissman Nov/Dec 90
- The Foothill Group: another in the series on the history of factoring and finance
by Sidney Rutberg Nov/Dec 90
- Leveraged buyouts: clever leveraging or badly bet debt?
by W. Matthew Waddell Nov/Dec 90
- The globalization of asset-based lending
by Paul E. Krantz and Teresa M. Britt Nov/Dec 90
- Where is banking headed?
by Dr. Paul S. Nadler Nov/Dec 90
- What ails the leveraged buyouts of the 1980s
by Yahya Latif Nov/Dec 90
- Organized trade: a concept that may favor the secured lender
by Daniel M. Morris, Carl Smigiel and Fred Slamin Nov/Dec 90
- Captive finance subsidiaries: a method of off-balance-sheet financing
by Jeffrey Randall Nov/Dec 90
- Warranty claims in a liquidation
by Sharonann Goldberg Nov/Dec 90
- Yesterday's LBO — today's DIP
by Christopher MacDonald Nov/Dec 90
- Achievement Award Winner — Edwards-Warren Tire Co. Nov/Dec 90
- Securitization of middle-market commercial loans
by Rajesh K. Tiwari Nov/Dec 90
- Using independent auditors for ABL field examinations
by Saul G. Berkowitz and Steven J. Mayer..Nov/Dec 90

- Cost accounting for production
by Jill Sutherland Nov/Dec 90
- Even in tough Japan, some U.S. firms find a way
to make a profit
by Louis Rukeyser Nov/Dec 90
- Appraiser certification: the time has come
by J. Brian O'Connell Nov/Dec 90
- Managing "people" problems in a turnaround situation
by Martin I. Katz Nov/Dec 90
- Challenges in the 1990s: lending on foreign receivables
by George J. Psomas Nov/Dec 90
- An emerging market for asset-based lenders
by David P. Wagner Nov/Dec 90
- Accountants' corner: business
valuations Nov/Dec 90

Solution to You be the judge

Solution and analysis

The obvious question (at least to me, since (a) I have great insight and (b) I wrote the column) is whether Assignee is perfected as to the securities. To frame the issue:

Trustee will argue that, at the date of bankruptcy, the securities were held by a third party (i.e. bailee) and under 8-313 of the UCC (1977 version), a security interest in marketable securities held by a bailee may only be perfected "... at the time a written notification... signed by the debtor... is received by ... [the Bank]". (8-313(1)(h)(ii)). Since Assignee did not give the requisite notice, it is unperfected.

Assignee will argue that the *Bank* was perfected under 8-313(1) (perfection occurs at the time the secured party obtains possession) and that, as a result of the assignment it now stands in the shoes of the Bank and it is perfected.

Trustee has policy considerations in its favor. The purpose of the perfection rules is to put third parties on inquiry notice as to the existence of a security interest. Where the "possessor" of the collateral is not the secured party, no such inquiry notice exists, since the possessor is not the bailee of the assignee/secured party. However, an assignee is an assignment, isn't it?

The issue is thus whether a perfected security interest somehow becomes unperfected merely by the change in identity of the secured party. Beats me.

If you conclude that Assignee loses, does it have any claim against Bank (God forbid!)? What if Bank warranted that it was assigning a perfected security interest in the securities? Was that warranty breached (if even for a moment) since the Assignee was never perfected, although the Bank was?

Trauma in the job market...

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In finance, we are not likely to see for a long time as many opportunities for employment as we had at the end of the 1980s. But if the companies and the people involved do their homework and think about what they really need and want to do, maybe this will be a blessing in disguise, and both banks and Wall Street firms and their laid-off employees will be better off when the trimming process is over. ▲

Businessperson's review...

(Continued from page 58)

- Construction of gross profit from initial margin to maintained margin;
- Operating expenses for several years and for all possible interim periods within the past two years.

Balance sheet analysis

- Receivables: significant accounts, overall aging experience, bad debt experience, average days outstanding, customer terms, etc.;
- Inventory: basis of valuation, aging, turnover, mark-down policy, etc.;
- Property and equipment: aging, location, utilization;
- Other assets: nature, classification;
- Payables: concentration, aging, terms;
- Short- and long-term debts;
- Contingent liabilities, guarantees and pension plans;
- Federal and state income tax returns for the last several years including results of any tax examinations.

Budgets

- Detailed budget for at least the next two years;
- Adjust the budgets for changes in the character and financing of the business contemplated by this acquisition.

This outline is intended to give the reader a flavor of the kind of information that should be assembled in the review process. It is in no way comprehensive. The review should be tailored to the exact nature of the business being reviewed and the needs of the parties. When completed, this businessperson's review will form a sound basis to evaluate the acquisition, shape the deal and define the needs of the seller, buyer and lender.

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